

No. A09-1338

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State of Minnesota  
In Court of Appeals

TIMOTHY A. GRUNOW,

*Relator,*

vs.

WALSER AUTOMOTIVE,

*Respondent,*

and

DEPARTMENT OF EMPLOYMENT AND ECONOMIC DEVELOPMENT,

*Respondent.*

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RESPONDENT-DEPARTMENT'S BRIEF AND APPENDIX

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

**TABLE OF CONTENTS**

**LEGAL ISSUE.....1**

**STATEMENT OF THE CASE .....1**

**DEPARTMENT’S RELATIONSHIP TO THE CASE .....2**

**STATEMENT OF FACTS .....3**

**STANDARD OF REVIEW.....4**

**ARGUMENT FOR INELIGIBILITY.....6**

**CONCLUSION ..... 11**

**APPENDIX..... 13**

**TABLE OF AUTHORITIES**

CASES

*Beyer v. Heavy Duty Air, Inc.*, 393 N.W. 2d 380 (Minn. App. 1986) -----5

*Jenson v. Dep't of Econ. Sec.*, 617 N.W.2d 627 (Minn. App. 2000), *review denied*  
(Minn. Dec. 20, 2000) -----5

*Lolling v. Midwest Patrol*, 545 N.W.2d 372 (Minn. 1996)-----2, 5, 7

*McCoy v. County of Ramsey*, 2007 WL 1248136, at \*2 (Minn. App. 2007) 7, 8, 10

*Midland Electric Inc. v. Johnson*, 372 N.W. 2d 810 (Minn. App. 1985)-----5

*Minn. Ctr. For Env'tl. Advocacy v. Minn. Pollution Control Agency*, 644 N.W.2d  
457 (Minn. 2002)-----5

*Peppi v. Phyllis Wheatley Community Center*, 614 N.W. 2d 750 (Minn. App.  
2000) -----6

*Skarhus v. Davannis*, 721 N.W.2d 340 (Minn. App. 2006)-----5

*Vargas v. Northwest Area Foundation*, 673 N.W. 2d 200 (Minn. App. 2004) ---6, 7

*Welshons v. Superior Truck Auto and Marine Inc.*, 2008 WL 2104454, at \*2  
(Minn. App. May 20, 2008)----- 8, 10

*Yukich v. Furin & Shea Welding & Fabricating*, 2006 WL 9583, at \*2 (Minn.  
App. January 03, 2006)-----8

STATUTES

Minn. Stat. § 116J.401, subd. 1(18) (2004) -----2

Minn. Stat. § 268.069, subd. 2 (2008)-----2

Minn. Stat. § 268.095, subd. 1 (2008)-----6

Minn. Stat. § 268.105, subd. 1(c) (2008) -----9

Minn. Stat. § 268.105, subd. 7 (2008)-----2, 3, 5

RULES

Minn. R. Civ. App. P. 115 -----2

### **Legal Issue**

Under the law, an individual who quits employment in order to accept substantially better employment, but then does not actually begin working in the new position, is not ineligible for unemployment benefits. Relator Timothy Grunow quit his employment at Walser Automotive Group LLC (“Walser”) in order to take a new position at a Denny Hecker dealership (“Hecker”). This new position paid less per hour, charged more for health insurance, and unlike his position at Walser, was non-union. It would, however, have been 15 miles closer to Grunow’s home, and would not have required him to work Saturdays, as Walser sometimes did.

The Unemployment Law Judge Dennis Evans found the Hecker position did not offer substantially better terms and conditions of employment, and therefore found that Grunow was ineligible for unemployment benefits.

### **Statement of the Case**

The question before this court is whether Grunow is entitled to unemployment benefits. Grunow established a benefit account with the Minnesota Department of Employment and Economic Development (the “Department”). A Department adjudicator determined that Grunow was ineligible for benefits, because he left employment for a new position that did not offer substantially

better terms or conditions of employment.<sup>1</sup> Grunow appealed that determination, and Unemployment Law Judge (“ULJ”) Dennis Evans held a de novo hearing. The ULJ held that Grunow quit his employment for the Hecker position, found that the Hecker position did not offer substantially better terms or conditions of employment, and found him ineligible for benefits.<sup>2</sup> Grunow filed a request for reconsideration with the ULJ, who affirmed.<sup>3</sup>

This matter comes before the Minnesota Court of Appeals on a writ of certiorari obtained by Relator under Minn. Stat. § 268.105, subd. 7(a) (2008) and Minn. R. Civ. App. P. 115.

#### **Department’s Relationship to the Case**

The Department is charged with the responsibility of administering and supervising the unemployment insurance program.<sup>4</sup> As the Supreme Court stated in *Lolling v. Midwest Patrol*, unemployment benefits are paid from state funds, the Minnesota Unemployment Insurance Trust Fund, and not from employer funds, the employer not being the determiner of entitlement.<sup>5</sup> This was later codified.<sup>6</sup> The Department’s interest therefore carries over to the Court of Appeals’ interpretation and application of the Minnesota Unemployment Insurance Law.

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<sup>1</sup> E-1(1). Transcript references will be indicated “T”. Exhibits in the record will be “E” with the number following.

<sup>2</sup> Appendix to Department’s Brief, A5-A10.

<sup>3</sup> Appendix, A1-A4.

<sup>4</sup> Minn. Stat. § 116J.401, subd. 1(18).

<sup>5</sup> 545 N.W.2d 372, 376 (Minn. 1996).

<sup>6</sup> Minn. Stat. § 268.069, subd. 2.

The Department is thus considered the primary responding party to any judicial action involving an Unemployment Law Judge's decision.<sup>7</sup>

The Department does not represent the employer in this proceeding and this brief should not be considered advocacy for Walser.

### **Statement of Facts**

Timothy Grunow was employed as a parts manager for Walser Automotive in Roseville from November 25, 2006, through April 3, 2009.<sup>8</sup> Grunow worked approximately 45 hours a week, earned a final rate of pay of approximately \$22.70 an hour, was a member of a union, and paid \$223.90 a month for family health insurance coverage.<sup>9</sup> On or about March 20, 2008 Grunow learned from an old friend working at Hecker, Paul Moormann, that there was a parts manager position open at the Denny Hecker dealership in Stillwater, MN, approximately 15 miles closer to Grunow's home than the Walser dealership.<sup>10</sup> Grunow accepted the position the day it was offered.<sup>11</sup> Moormann testified that he did not know whether Hecker had already entered into bankruptcy protection at the time he offered Grunow the job, although he knew it was experiencing some financial instability.<sup>12</sup>

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<sup>7</sup> Minn. Stat. § 268.105, subd. 7(e).

<sup>8</sup> T. 10.

<sup>9</sup> T. 11-12, 17, 20.

<sup>10</sup> T. 14

<sup>11</sup> T. 15.

<sup>12</sup> T. 16.

The Hecker position paid \$21.50 an hour, was not a union position, and charged \$450 a month for family health insurance coverage.<sup>13</sup> Grunow accepted the position knowing it paid somewhere from \$1.20 to \$1.75 less an hour, and did not check out the benefits coverage before accepting the position.<sup>14</sup> Grunow decided that his wife's benefits coverage was sufficient, and that he would not need the benefits from Hecker, despite the fact that his family received medical insurance through his position at Walser.<sup>15</sup> Grunow quit his position at Walser because he wanted to be able to carpool with his wife to work, which he could do in the Hecker position. Grunow thought that this would save him \$100 or \$150 a week in car and gas expenses.<sup>16</sup> He also thought that this would allow him to be home more often on Saturdays, since at Walser he would work one to two Saturdays a month, and to spend more time with his family.<sup>17</sup> Unfortunately, the Hecker dealership closed the day he was supposed to start.<sup>18</sup> Grunow tried to get his old job at Walser back, but he had already been replaced.<sup>19</sup>

### **Standard of Review**

When reviewing an unemployment-benefits decision, the Court of Appeals may affirm the decision, remand for further proceeding, reverse, or modify the

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<sup>13</sup> T. 17, 20.

<sup>14</sup> T. 16, 18.

<sup>15</sup> T. 19.

<sup>16</sup> T. 13.

<sup>17</sup> T. 11-12, 18.

<sup>18</sup> T. 13, 15.

<sup>19</sup> T. 17.

decision if Grunow's substantial rights were prejudiced because the decision of the ULJ violated the constitution, was based on an unlawful procedure, was affected by error of law, was unsupported by substantial evidence, or was arbitrary or capricious.<sup>20</sup>

The Court of Appeals has stated on a number of occasions that whether and why an applicant quit employment are questions of fact for the ULJ to determine.<sup>21</sup> The Court of Appeals held in *Skarhus v. Davannis*, that it views the ULJ's factual findings "in the light most favorable to the decision,"<sup>22</sup> and gives deference to the ULJ's credibility determinations.<sup>23</sup> The Court also stated that it will not disturb the ULJ's factual findings when the evidence substantially sustains them.<sup>24</sup> The Supreme Court in *Minn. Ctr. for Envtl. Advocacy v. Minn. Pollution Control Agency* defined substantial evidence as "such evidence as a reasonable mind might accept as adequate to support a conclusion."<sup>25</sup>

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<sup>20</sup> Minn. Stat. §268.105, subd. 7(d)(3)-(6) (2008).

<sup>21</sup> *Beyer v. Heavy Duty Air, Inc.*, 393 N.W. 2d 380, 382 (Minn. App. 1986); *Midland Electric Inc. v. Johnson*, 372 N.W. 2d 810, 812 (Minn. App. 1985).

<sup>22</sup> 721 N.W.2d 340, 344 (Minn. App. 2006) (citing *Lolling v. Midwest Patrol*, 545 N.W.2d 372, 377 (Minn. 1996)).

<sup>23</sup> *Id.* (citing *Jenson v. Dep't of Econ. Sec.*, 617 N.W.2d 627, 631 (Minn. App. 2000), *review denied* (Minn. Dec. 20, 2000)).

<sup>24</sup> *Id.* (citing Minn. Stat. §268.105, subd. 7(d)).

<sup>25</sup> 644 N.W.2d 457, 466 (Minn. 2002).

In *Peppi v. Phyllis Wheatley Community Center*, the Court of Appeals reiterated that it reviews de novo the legal question of whether the applicant falls under one of the exceptions to ineligibility under Minn. Stat. § 268.095, subd. 1.<sup>26</sup>

### **Argument for Ineligibility**

An applicant who quits employment is ineligible for all unemployment benefits unless he falls under a statutory exception to ineligibility. Minnesota statutes render Grunow ineligible for unemployment benefits because he quit his employment in order to accept a new position that did not offer substantially better terms or conditions of employment.

The statute provides in pertinent part:

Subd. 1. **Quit.** An applicant who quit employment is ineligible for all unemployment benefits according to subdivision 10 except when:

(2) the applicant quit the employment to accept other covered employment that provided substantially better terms and conditions of employment, but the applicant did not work long enough at the second employment to have sufficient subsequent earnings to satisfy the period of ineligibility that would otherwise be imposed under subdivision 10 for quitting the first employment;

\* \* \*<sup>27</sup>

In *Vargas v. Northwest Area Foundation*, the Court of Appeals, citing a number of statutory provisions, held that an individual's eligibility for unemployment benefits is determined based upon the available evidence without

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<sup>26</sup> 614 N.W. 2d 750, 752 (Minn. App. 2000).

<sup>27</sup> Minn. Stat. § 268.095, subd. 1 (2008).

regard to any burden of proof.<sup>28</sup> As further clarified in *Lolling v. Midwest Patrol*, since Minnesota law does not assign a burden of proof to either party, an applicant cannot be found eligible for benefits simply because an employer does not fully participate in proceedings.<sup>29</sup> Here, the available evidence shows that Grunow quit employment in order to accept a position that did not offer substantially better terms and conditions of employment, and is therefore ineligible for unemployment benefits.

The intent of this statutory exception to ineligibility is to extend benefits to those employees who take the entirely understandable step of quitting employment to accept better employment, and then find themselves abruptly unemployed through no fault of their own. At the same time, though, the statute is narrowly crafted, in recognition of the fact that it would be extraordinarily easy to manipulate a system that grants benefits for quitting a job. As a result, this Court has made clear that the statute establishes an objective standard for whether a position offers substantially better terms and conditions of employment. This Court explained, in *McCoy v. County of Ramsey*, that “the statute contemplates a comparison of the terms and conditions of the positions in question, and not a comparison of which position is more suitable to the personal needs of an individual employee.”<sup>30</sup>

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<sup>28</sup> 673 N.W. 2d 200 (Minn. App. 2004).

<sup>29</sup> 545 N.W.2d 372, 376 (Minn. 1996).

<sup>30</sup> 2007 WL 1248136, at \*2 (Minn. App. 2007), Appendix. A15-A17.

In *McCoy* the Court found the relator ineligible for benefits because the new position was not objectively better than her old, and disregarded the relator's arguments that the new position better met her "personal needs" by allowing her to be more accessible to her children.<sup>31</sup> Thus, the fact that the new position paid less, did not offer health care benefits, and was non-union, showed that the new position was not objectively substantially better than the old, notwithstanding the fact that the family was covered under another health insurance policy, and that the new position offered McCoy the chance to spend more time with her children.<sup>32</sup>

Similarly, in *Welshons v. Superior Truck Auto and Marine Inc.*, the court found that an applicant's new position did not offer substantially better terms or conditions of employment when it paid \$3 an hour less than his old position, despite the fact that it offered a shorter commute, more modern working conditions, and an opportunity to earn commissions.<sup>33</sup> Even a pay raise does not, in and of itself, constitute substantially better terms or conditions of employment. In *Yukich v. Furin & Shea Welding & Fabricating*, the Court established that where the new position paid \$14.50 an hour, and the old paid \$14 an hour, the new position did not offer substantially better terms or conditions of employment.<sup>34</sup> These objective standards set the bar high. They also prevent employees from

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<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at 1-2.

<sup>33</sup> 2008 WL 2104454, at \*2 (Minn. App. May 20, 2008), Appendix, A11-A14.

<sup>34</sup> 2006 WL 9583, at \*2 (Minn. App. January 03, 2006), Appendix, A18-A20.

manipulating the unemployment insurance program by accepting objectively lesser positions of employment that they suspect, for whatever reason, will not last.

Grunow does not meet this objective standard. In his brief, Grunow argues that the new position offered substantially better terms or conditions of employment because he could have carpooled with his wife, saving him approximately \$13,750 a year.<sup>35</sup> He also argues that he could have dropped his health insurance coverage in his new job, saving the cost of the insurance that he purchased while working at Walser.<sup>36</sup> Finally, he contends that he would work less at Hecker, and that he would be paid overtime for working on Saturdays or Sundays.<sup>37</sup>

However, some of Grunow's arguments are not borne out by the ULJ's findings or by the record. The Court of Appeals does not reweigh the evidence, it being for the trier of fact to resolve the conflicts in the testimony. Here the ULJ, in accordance with the statutory requirement, made factual findings after a hearing in which the parties largely agreed on the facts.<sup>38</sup> The ULJ found that health insurance would have cost \$220 more at Hecker than it would at Walser, and Grunow's contention that he could have found a way to save money by dropping coverage is not supported by Grunow's sworn testimony that he did not even

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<sup>35</sup> Relator's brief, p. 2.

<sup>36</sup> Relator's brief, p. 2.

<sup>37</sup> Relator's brief, p. 2.

<sup>38</sup> Minn. Stat. §268.105, subd. 1(c).

bother to find out what Hecker's benefits package was before he accepted the position.<sup>39</sup> The record also does not support Grunow's assertion that he "had to work regularly on Saturday and on Sunday about once a month with no extra pay whatever."<sup>40</sup> The Walser representative testified that Grunow generally had to work one out of every three Saturdays, and that he was given a day off during the week to make up for those working Saturdays.<sup>41</sup> Grunow largely agreed with that assessment, although he testified that when other employees' vacation time came due he would have to work a six-day week as often as "almost every other week."<sup>42</sup> By Grunow's own admission, he was not working six days every week, nor was he working seven-day weeks once a month. While the Department understands the impulse to exaggerate the differences between the positions at Hecker and Walser, the record does not support them. Moreover, even in those areas where the record does show a difference between the positions, those differences are not substantial. A new position that shortens a commute by fifteen miles, or allows for carpooling with greater ease, are not substantially better terms and conditions of employment. In *McCoy* and *Welshons* the court rejected the arguments of relators, like Grunow, who sought positions that paid less but were closer to home. Those tradeoffs may make sense for individual employees, but they do not make the new employment objectively better.

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<sup>39</sup> Return-3(3), T. 16, 18.

<sup>40</sup> Relator's brief, p. 2.

<sup>41</sup> T. 11.

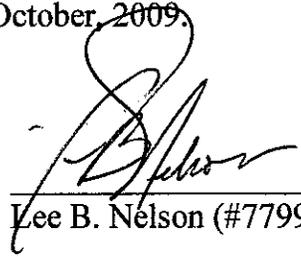
<sup>42</sup> T. 12.

What the record shows was that Grunow left his position at Walser for a position at Hecker that was in some ways slightly better, and in some ways slightly worse, than the one he was leaving. In terms of objective comparison, the position at Hecker paid less, was non-union, offered more expensive health insurance, and was for an employer that was having some financial difficulties at the time that Grunow accepted the position. While the position was closer to home for Grunow, this did not make the position objectively superior, and does not show that the terms or conditions of the new employment were substantially better.

### **Conclusion**

Unemployment Law Judge Dennis Evans correctly concluded that Grunow quit employment to accept a new position that did not offer substantially better terms or conditions of employment. The Department requests that the Court affirm the decision of the Unemployment Law Judge.

Dated this 19<sup>th</sup> day of October, 2009.



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**APPENDIX**

	<b>Page(s)</b>
Order of the Unemployment Law Judge, dated June 25, 2009.....	A1-A4
Findings of Fact and Decision of the Unemployment Law Judge, dated May 12, 2009.....	A5-A10
<i>Welshons v. Superior Truck Auto and Marine Inc.</i> , unpublished, A07-759 filed May 20, 2008.....	A11-A14
<i>McCoy v. County of Ramsey</i> , unpublished, A06-1153 filed May 1, 2007.....	A15-A17
<i>Yukich v. Furin &amp; Shea Welding &amp; Fabricating</i> , unpublished, A05-558, filed January 3, 2006.....	A18-A20